



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉ)

IN PRIVATE
HUIS CLOS
TA2-21136

CLAIMANT(S)

DEMANDEUR(S)

(a.k.a.)

DATE(S) OF HEARING

July 3, 2003

DATE(S) DE L'AUDIENCE

DATE OF DECISION

August 6, 2003

DATE DE LA DÉCISION

CORAM

V. Rangan

CORAM

FOR THE CLAIMANT(S)

Christine Sepuya
Barrister and Solicitor

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

R. Rashid

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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s.19(1)

These are the reasons for the decision of the Refugee Protection Division (RPD),
with respect to the refugee protection claim made by (a.k.a.

, a citizen of Saint Lucia. The hearing into this claim was held pursuant to section 170(b) of the Immigration and Refugee Protection Act (IRPA),¹ on 2003, at Toronto, Ontario. The claimant claims refugee protection on the basis of her membership in a particular social group – sexual orientation.

Allegations:

In her Personal Information Form (PIF),² the claimant alleges that she is a bisexual person, and had tried very hard to change her attitude and sexual orientation because of the attitude of the society of her country of origin towards bisexuals. In 1999 when she told her parents about her sexual orientation, her father threatened to kill her. Six months later, he viciously attacked and beat her, resulting in injuries that required medical treatment.

In 1996 the claimant met , to whom she was attracted, and they bonded immediately. During 's visit to Saint Lucia, she was openly demonstrative of her feelings for the claimant. This behaviour continued later, in the presence of the claimant's aunt in Toronto, who became suspicious. did admit her sexual orientation to the claimant's aunt, and at the same time revealed that the

¹ Immigration and Refugee Protection Act, S.C. 2001, c. 27.

² Exhibit C-1.

claimant was also a lesbian. The aunt promptly informed the claimant's father, who, on hearing the news, threatened the claimant and cut off all financial support to his daughter.

The claimant alleges that she can never go back to Saint Lucia, since her father and the rest of the family would never accept her. She cannot get protection from the government since homosexuality is considered a crime.

Determination:

The panel finds that the claimant is not a Convention refugee, as she does not have a well-founded fear of persecution for a Convention ground in Saint Lucia. The panel also finds that the claimant is not a person in need of protection, in that her removal to Saint Lucia would not subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment, or a danger of torture. There is also not a serious possibility of a risk to her life or a risk of cruel and unusual treatment or punishment on her return to Saint Lucia. The reasons are as follows.

Analysis:

Failure to Claim:

The claimant was in Canada in 1996 for one year, and once again for three years from 1999 to 2002. She was again in Canada from 2002 to 2002. She was given a student visa in 1999 for a period of three years, which expired in 2002. She made a claim for Convention refugee status in 2002. She was also in the United States (US) for periods of time from

2000 to 2001. During the period from 2000 to the time of her claim in 2002, the claimant alleges that she had faced immense hardship, mistreatment and even physical abuse from her family – especially her father. The claimant alleges that she fears that her father would continue to physically harm her, in fact even kill her, should she return to Saint Lucia. Yet, in spite of this fear and the fact that her father had cut off the funding for her education, the claimant made no attempt to secure her status here in Canada. It has to be noted that the claimant made her claim only when her student visa had expired.

When questioned about the reason for failure to claim earlier, she testified that although she was aware she could make a claim in Canada, she was not aware of the process. However, I find that such a statement is not sufficiently credible and trustworthy evidence to ignore such a delay. The claimant speaks the English language well, has been in Canada for three years, and has traveled to the US several times. I find that the long delay in claiming for refugee protection undermines the credibility of her testimony that she cannot return because she continues to fear her father, and fears discrimination by the society.

Delay in making a claim has been recognized by the Federal Court as an important factor in assessing the claim's validity;³ it is not a decisive factor,⁴ however, it is

³ Heer, Karnail Singh v. M.E.I. (F.C.A., no. A-474-87), Heald, Marceau, Lacombe, April 13, 1988.

⁴ Huerta v. Canada (Minister of Employment and Immigration) (1993), 157 N.R. 225 (F.C.A.).

reasonable to expect that those with a well-founded fear of persecution will attempt to apply for Convention refugee status without unreasonable delay.⁵ This was not done here. Although she had a visa till 2002, she was not attending school, due to lack of finances. She had ample time to enquire about the refugee process and make a claim earlier and not later. There is no persuasive evidence before the panel that the claimant took reasonable steps to safeguard her stay in Canada. Instead, she continued to stay in Canada and travel to the US during this period. In addition to the delay in making a claim, the claimant also failed to make a claim in the US, which is also a signatory to the 1951 Convention. Her excuse was that her girlfriend, was in Toronto. In the panel's view this is a flimsy excuse for so serious a matter as a flight due to fear of persecution.

The claimant stated that, should she return to her country of origin, she fears her father the most. After the fight with her father, the claimant went to stay with her friend

When she was out one day, the claimant saw her father in the city's shopping area, and he just ignored her. It does not seem reasonable that a person she fears will harm her physically would just ignore her and not even utter a few angry words. In addition, the claimant's father knew that she was living with her friend, and yet never contacted her either in person or on the phone. In the panel's view, this inaction, or perhaps even indifference, on the part of the father does not seem in any way to be

⁵ Hathaway, James C., The Law of Refugee Status, (Toronto: Butterworths, 1991), p. 53.

threatening. It has to be noted that the claimant failed to present any corroborating evidence, such as medical reports, to the panel, in spite of the clear instruction in the letter dated . . . 2003 to the counsel. The claimant also had the benefit of a counsel at the time the claim was initiated, and at the hearing of her claim, and had sufficient time to procure the documents. The claimant stated that this medical report was at her friend . . . 's house, and made no reasonable efforts to procure the same for the hearing of her claim. In the absence of the medical reports or any other evidence other than her oral testimony, the panel gives very little weight to her testimony about the harm perpetrated against her by her father.

The claimant presented no evidence of her former partner . . . There were neither photographs of . . . nor was l . . . or even her aunt present to testify at the hearing. In the absence of any proof about . . . or about the incidents in her life, the panel draws a negative inference.

A review of the file indicates that the claimant had angered her family due to her sexual orientation. She has never been subject to any serious harm by the society at large that she says she fears. An interesting aspect of her testimony is that she states that she is bisexual. At the time of the hearing of her claim, she was in a relationship with a man, and had severed any relationship with . . . If she were to return to Saint Lucia today, she would have no problem either with her family members or the society because of her current relationship. In addition, even if she were to find a partner of the same sex

at a later stage, the documentary evidence⁶ states that there are no official restrictions directed at homosexuals by the country's judicial system. In the same document it also states that it is conceivable that police would ignore complaints by homosexuals. However, the claimant did not approach the police when her father seriously injured her.

The documentary evidence⁷ states:

Although homosexuality is illegal and not condoned in St. Lucia, there is no official prejudice directed at homosexuals by the country's judicial system. For criminal prosecutions in which a homosexual has been the victim of assault or vandalism, the fact that he/she is homosexual would not be a factor in whether or not the courts administer justice.

The document goes on to say that:

The president states that the victim of the crime would need to be persistent in his accusations and lodge a complaint at a higher level, such as the Complaint's Desk, established in January 2001, within the Ministry of Legal Affairs, or the Ombudsman's Office, or seek assistance from NGOs such as the National Centre for Legal Aid and Human Rights.

The panel has very carefully reviewed the allegations in the narrative and in the claimant's oral testimony, and finds that the claimant presented no persuasive evidence about her sexual orientation as a bisexual. In the absence of any proof to establish the very basis of her claim, the panel finds that there is no nexus to the claim. The claimant is therefore determined not to be a Convention refugee.

⁶ Exhibit R-1, Response to Information Request: LCA36464.E, February 23, 2001.

⁷ Ibid.

Consolidated grounds:

Although homosexuality is illegal in St. Lucia, there is no persuasive evidence before the panel that there would be a risk to her life or a risk of cruel and unusual treatment or punishment should she return to her country of origin. Although a nexus is not required to consider the consolidated grounds, in the particular claim before the panel, if the claimant is not bisexual then there are no grounds to fear any harm to her life.

Having considered the totality of the evidence, the relevant statutory provisions, and jurisprudence, the Refugee Protection Division rejects her claim for protection.

Therefore, _____ (a.k.a. _____) is determined not to be a Convention refugee or a person in need of protection.

"V. Rangan"
V. Rangan

DATED at Toronto this 6th day of August 2003.

s.19(1)